

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Competitive Product Prices
Global Plus 2C Contracts (MC2012-5)
Negotiated Service Agreements

Docket No. CP2014-43

PUBLIC REPRESENTATIVE COMMENTS ON POSTAL SERVICE
NOTICE OF FILING FUNCTIONALLY EQUIVALENT GLOBAL PLUS 2C CONTRACT
NEGOTIATED SERVICE AGREEMENT

(April 23, 2014)

The Public Representative hereby provides comments pursuant to Order No. 2052.¹ In that Order, the Commission established the above referenced docket to receive comments from interested persons, including the undersigned Public Representative, on a Postal Service Notice of its entering into an additional Global Plus 2C Negotiated Service Agreement.² The contract that is the subject of this docket is scheduled to become effective on May 1, 2014, upon the termination of the agreement that is the subject of Docket No. CP2013-42 with the same company.³ The agreement subject to this proceeding is scheduled to end on March 31, 2015.⁴

¹PRC Notice and Order Concerning Additional Global Plus 2C Negotiated Service Agreement, April 14, 2014).

²Notice of the United States Postal Service of Filing A Functionally Equivalent Global Plus 2C Contract Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal, April 14, 2014 (Notice).

³See PRC Order No. 2028, Order Granting Motion for Temporary Relief in Global Plus 2C Contract Negotiated Service Agreement, Docket No. CP2013-42, March 19, 2014.

⁴See Attachment 1 to Postal Service Notice, Agreement page 5 , Article 7, 1(a).

Customers for Global Plus 2C contracts are Postal Qualified Wholesalers (PQWs) and other large businesses that offer mailing services to end users for shipping articles via Global Direct and/or International Business Reply Service. *Id.* at 5. The Postal Service seeks to add the Global Plus 2C Negotiated Service Agreement (contract) that is the subject of its Notice to the competitive productive list, asserting that it is functionally equivalent to the baseline agreements in CP2012-10 and CP2012-11. *Id.* at 3. It further asserts that the contract is in compliance with 39 U.S.C. §3633 and therefore should be added to the competitive products list as part of the Global plus 2C product grouping. *Id.* at 8.

BACKGROUND

The Commission added the contracts filed in Docket Nos. CP2012-10 and CO2012-11 to the competitive product list as a new product, Global Plus 2C.⁵ The contracts filed in the latter dockets serve as the baseline agreements for comparison of potentially functionally equivalent agreements under the Global Plus 2C grouping. The Commission determined that individual Global Plus 2C contracts may be included as part of the Global Plus 2C product if they meet the requirements of 39 U.S.C §3633 and if they are functionally equivalent to the previously submitted Global Plus 2C contracts.

⁵PRC Order No. 1135 - Order Adding Global Plus 2C to the Competitive Product List and Approving Functionally Equivalent Global Plus 2C Agreements, January 13, 2012.

COMMENTS

Based on the Public Representative's review, it is not apparent whether the Postal Service factored in the new methodological change to its financial model to accommodate costs that cannot be modeled or increased the contingency factor.⁶ The Commission recently approved the new methodology for Global Direct Outbound Admail™ which allocates settlement costs based on revenue shares.⁷ Given the Commission's directive and the Postal Service's statement related to the uncertainty of the unmodeled costs, the Public Representative does not comment on whether the instant contract meets the requirements of 39 U.S.C. §3633.

The changes made in the 'Article 34. Contingency Prices' section of the contract in this proceeding result in the potential for an expired contract with a surviving clause for an International Reply Business Services (IRBS) contingency pricing arrangement on an indefinite basis.⁸ The Postal Service removed the language in the contract in this

⁶See Proposal 5, Docket No. RM2013-6, Order No. 1983, Order on Analytical Principles Used in Periodic Reporting (Proposals One through Five), February 5, 2014. In the FY 2012 Annual Compliance Determination, the Commission directed the Postal Service to modify its financial model for Global Plus "...to more accurately develop costs, or increase the contingency factor to accommodate costs that cannot be modeled, in order to ensure that the negotiated prices can generate sufficient revenues to exceed attributable costs. See 2012 Annual Compliance Determination at 169-170. This was in response to the Postal Service's explanation for the Global Plus 2B and 2C products during FY 2012, that attributable costs exceeded revenues for outbound Admail™ to Canada. The Postal Service noted that the rate schedules of Canada Post applicable to outbound Admail™ "have detailed structures...that are not able to be explicitly considered in estimating ...costs." See Responses of the United States Postal Service to Chairman's Information Request No. 8, question 5 in Docket No. ACR2012.

⁷See Attachment1.xlsx filed in USPS-FY12-NP41, Non Public Materials Provided in Response to Commission ACD Requests, June 26, 2013. The old methodology was based on pounds for distributing settlement costs reported in the ICRA for Global Direct Outbound Admail to NSAs in the Global Plus products. See ACD 2013 at 146.

⁸Revisions to Article 34 concerning Contingency Prices and the deletion of Annex 5 concerning Contingency Prices for International Business Reply Service, Attachment 1 to Postal Service Notice Agreement Page 17. The Postal Service deleted the following text that had been in the earlier contract with this same company: "The prices listed in Annex 5 are contingent upon any and all necessary approvals for corresponding USPS prices by the USPS Governors, the USPS Board of Governors, and/or the United States Postal Regulatory Commission." See Attachment 1 to Postal Service Notice in Docket No. CP2013-42

proceeding that states the contingency prices are based on the “necessary approvals...” (e.g., the Postal Regulatory Commission) and replaced it with: “These prices shall be valid until such time as they are revised at the sole discretion of the USPS.”⁹

The Postal Service believes that the additional Global Plus 2 contract subject of this proceeding fits within the Mail Classification Schedule language for the Global Plus 2 group. *Id.* at 3. The Public Representative agrees except in the event that when this contract expires, the Postal Service has left a surviving IBRS contingency-pricing arrangement not currently reflected in the Mail Classification Schedule.

When the contract under review expires, the Public Representative assumes that the Postal Service will notify the Commission, despite the elimination of the wording for the contingency prices “are contingent upon necessary approvals from the United States Postal Regulatory Commission” that it has entered into a contingency pricing arrangement outside of an expired negotiated service agreement, if it does so.¹⁰

. The last new sentence in the ‘Article 34 Contingency Prices’ contract section for the International Business Reply Service states that: “These prices shall be valid until such time as they are revised at the sole discretion of the USPS.” However, in the ‘Article 15. Postage Updates’ section of the contract it states that: “The prices in Annex

⁹ Attachment 1 to Postal Service Notice, Agreement Page 17. The Postal Service deleted the following text that had been in the earlier contract with this same company: “The prices listed in Annex 5 are contingent upon any and all necessary approvals for corresponding USPS prices by the USPS Governors, the USPS Board of Governors, and/or the United States Postal Regulatory Commission.” See Attachment 1 to Postal Service Notice in Docket No. CP2013-42, Agreement Page 17.

¹⁰ Despite the different products, this contingency pricing outside of an expired contract is analogous to the contingency pricing in the IBRS contract, Docket No. CP2012-59. See Order No. 2037-Order Approving Change in Prices Under International Business Reply Service Competitive Contract 3 Negotiated Service Agreement and Providing Additional Guidance on Contingency Pricing Arrangements, March 31, 2014.

3 are related to the price Canada Post Corporation (CPC) charges the USPS for processing International Business Reply items in Canada. Should the price CPC charges the USPS for processing International Business Reply items change **during the term of this Agreement (emphasis added)**, the USPS shall notify the Mailer and modify the prices established under this Agreement.”¹¹ Why wouldn’t this apply as well during the contingency pricing arrangement?

In the ‘Article 15. Postage Updates ‘contract section, paragraph 2, the Postal Service identifies a point value for increased incurred costs when it reserves the right to adjust the prices for that service during the term of the Agreement. For the specific value chosen, the Postal Service should demonstrate that below this value, the financial model filed in this proceeding would continue to cover attributable costs. It’s not apparent to the Public Representative how the Postal Service factored in the possibility of this level of increased cost during the Agreement and whether the cost contingency factors used in the financial model align with the cost flexibility allowed in the contract terms.¹²

Functional Equivalency. The Postal Service contends that the instant contract is functionally equivalent to the baseline contracts in Dockets CP2012-10 and CP2012-11 in that they share similar cost and market characteristics. *Id.* at 4. The Postal Service, however, does identify a number of differences between the instant contract and the baseline contract, but does not consider them to affect either the fundamental service offered or the fundamental structure of the contract.” *Id.* at 7.

¹¹ Attachment 1 to Postal Service Notice, Agreement Page 11, paragraph 3.

¹² In addition, it does not appear that the Postal Service updated a cost input from the previous financial model filed in Docket No. CP2013-42. In the Global Direct Excel financial model file, the value in cell C23 on the 02_Inputs worksheet is the same in this docket as it was in Docket No. CP2013-42.

The Public Representative has carefully reviewed the Global Plus 2C contract that is the subject of Docket CP2013-42 and the baseline contracts in CP2012-10 and CP2012-11 and considers that they do share similar cost and market characteristics. However, the removal of the 'necessary approvals' statement in the contingency pricing section of the contract section and the replacement with 'sole discretion of the Postal Service' would seem to make the contract in this proceeding not legally functionally equivalent.

The Public Representative provides these comments for the Commission's consideration.

Respectfully submitted,

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